Supreme Court, U.S.
FILED

09-450 OCT 10 2009

OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

BRYAN RORING KOLOAY,
PETITIONER,

VS.

ERIC H. HOLDER JR., ATTORNEY GENERAL
RESPONDENT.

ON PETITION FOR A WRIT OF
CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CINDY S. CHANG, ESQ.
LAW OFFICE OF CINDY S. CHANG
19811 COLIMA ROAD, SUITE 600
WALNUT, CA 91789
TEL: 909-595-9877
Fax: 909-595-9876

ATTORNEY FOR PETITIONER

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the incidents happened to petitioner in Indonesia on account of his Christian religion rise to the level of persecution?

2. Whether there is a clear probability that Petitioner will suffer persecution if returned to Indonesia based on the current country condition in Indonesia?

3. Whether petitioner is a member of the "disfavored minority group" as described in Sael; and therefore, he is eligible for the relief in the form of withholding of removal in accordance with the most recent Ninth Circuit Court's decision in Wakkary?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. US Court of Appeals for the Ninth Circuit, Respondent
2. Eric H. Holder, Jr., U.S. Attorney General, Respondent
3. Shelley R. Goad, Attorney for Respondent
4. Ronald E. LeFevre, Attorney for Respondent
5. The Board of Immigration Appeals
6. Immigration Judge in Los Angeles, CA
7. Cindy S. Chang, Attorney for Petitioner
8. Bryan R. Koloay, Petitioner

TABLE OF CONTENTS

STATEMENT OF JURISDICTION --- 1

CONSTITUTIONAL ROVISIONS, STATUTES, AND REGULATIONS ---------- 1

STATEMENT OF THE CASE -------- 1

ARGUMENT ---------- 2

1. The cumulative effect of the incidents happened to Petitioner on account of his Christian religion in Indonesia amounts to past persecution; therefore, Petitioner's application for withholding of removal should have been granted. ---------- 2

2. There is a clear probability that the Petitioner will suffer persecution if returned to Indonesia because the Indonesia's country condition is still dangerous to the people with Chinese heritage and Non-Muslim believes. --------- 4

3. Petitioner is a member of the "disfavored group"; and in accordance with the Ninth Circuit Court's most recent decision in Wakkary, Petitioner is eligible for the relief in the form of withholding of removal --4

CONCLUSION ---------- 5

INDEX TO APPENDICES ---------- 6

TABLE OF AUTHORITIES

Cases	Page
Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir. 1988)	3
Knezevic v. Ashcroft 367 F.3d 1206, 1211 (9th Cir. 2004)	4
Sael v. Ashcroft 386 F.3d 922, 923 (9th Cir. 2004)	5
Sangha v. INS 103 F.36 1482, 1487 (9th Cir. 1997)	3
Singh v. INS 94 F.3d at 1353, 1358 (9th Cir. 1996)	3
Shirazi-Parsa v. INS 14 F.3d 1424, 1428 (9th Cir. 1994)	3
Wakkary v. Holder 558 F.3d 1049 (9th Cir. 2009)	4,5
Regulations	
US Supreme Court Rule 10	1
US Supreme Court Rule 10(a)	1

STATEMENT OF JURISDICTION

On July 17, 2009, the US Court of Appeals for the Ninth Circuit denied the Petitioner's petition for rehearing en banc. This Court's jurisdiction to grant the review on a writ of certiorari is discretional. US Supreme Court Rule 10. The judicial discretion is warranted here because the US Court of Appeals for the Ninth Circuit has entered a decision in conflict with its own decision on the same important matter. US Supreme Court Rule 10 (a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. US Supreme Court Rule 10
2. US Supreme Court Rule 10(a)

STATEMENT OF THE CASE

This is an immigration case. Petitioner is a native and citizen of Indonesia with Christian belief. He left his home country and entered the United States on December 20, 2000, with B-2 tourist visa and never went back to Indonesia since then.

As a Christian Indonesian, petitioner had suffered threats, discriminations and harassments for his entire life in Indonesia on account of his religion. Petitioner had also suffered physical injury from an attack by the native Muslim people. Because of those bad experiences he had suffered in Indonesia on account of his Christian religion, petitioner filed for asylum application.

The Immigration Judge ("IJ") denied the petitioner's application for asylum because of the one-year bar. Petitioner does not contest that decision. However, the denial of the Petitioner's application for relief in the form of withholding of removal by IJ was erroneous because as what Petitioner had suffered in Indonesia on account of his religion, and also, as the current country condition in Indonesia suggests, there is a clear probability that the Petitioner will suffer future harm if returned to Indonesia; therefore, Petitioner's application for relief in the form of withholding of removal should have been granted.

Petitioner filed a timely appeal to the Board of Immigration Appeals ("BIA"). The BIA affirmed the decision of the IJ and dismissed his appeal on February 14, 2006. Thereafter, Petitioner filed a timely petition for review with the US Court of Appeals for the Ninth Circuit.

Unfortunately, the Ninth Circuit Court denied petitioner's petition for review by issuing a memorandum on March 30, 2009. Petitioner then filed a Petition for Rehearing En Banc and that petition was denied on July 17, 2009.

ARGUMENT

1. **The cumulative effect of the incidents happened to Petitioner on account of his Christian religion in Indonesia amounts to past persecution; therefore, Petitioner's application for withholding of removal should have been granted.**

During the removal proceedings, Petitioner had credibly testified that he had suffered persecution in Indonesia at the hands of the native Muslim Indonesians just because he is a Christian. There were many incidents that petitioner was threatened by the Muslims. At one incident, Petitioner even suffered physical harm.

In Singh v. INS, 94 F.3d 1353, 1358 (9th Cir. 1996) the Court found "Persecution may be found by cumulative, specific instance of violence and harassment toward an individual and her family members not only by the government, but also by a group the government declines to control." (Citing Shirazi-Parsa v. INS, 14 F.3d 1424, 1428 (9th Cir. 1994) The Ninth Circuit Court in Singh also found "discrimination, harassment, and violence by groups the government is unwilling or unable to control can also constitute persecution." Id. at 1539 (Citing Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir. 1988)). Furthermore, the Court in Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997) found "A single isolated incident may not "rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution.

In this case, petitioner had suffered on-going threats, harassments, and attacks by the native Indonesians. The Indonesia government was, and still is, not willing or able to control its extreme Muslim people. Cumulatively, the incidents happened to petitioner in Indonesia on account of his religion compels the conclusion that he had suffered past persecution.

2. **There is a clear probability that the Petitioner will suffer persecution if returned to Indonesia because the Indonesia's country condition is still dangerous to the people with Chinese heritage and Non-Muslim believes.**

The long history of anti-Chinese sentiment and religious clashes in Indonesia is an undisputable fact. After so many Chinese people were killed and so many Churches were destroyed, still, there is no solid evidence that the Indonesia government is willing or able to control the extreme Muslims.

The fact that the ongoing violence against Chinese and Christian currently still happening in Indonesia further proves Petitioner's fear to return to Indonesia is well-founded because any reasonable person in similar situation would have the fear of returning to Indonesia.

"Even a ten percent chance that the applicant will be persecuted in the future is enough to establish a well-founded fear." Knezevic v. Ashcroft, 367 F.3d 1206, 1211 (9th Cir. 2004) As the Country Report, as well as the history of Indonesia, suggest that the chance that the petitioner will be persecuted in the future is more than ten percent; therefore, to conclude that the Petitioner has not met his burden of proof to show that there is a clear probability of persecution in Indonesia was wrong.

3. **Petitioner is a member of the "disfavored group"; and in accordance with that Court's most recent decision in Wakkary, Petitioner is eligible for the relief in the form of withholding of removal.**

As a Christian Indonesian, Petitioner is a member of "disfavored group" as defined in Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2004). In Wakkary v. Holder, 558 F.3d 1049 (9th Cir. 2009), the US Court of Appeals for the Ninth Circuit, for the first time, extended its "disfavored group" approach in asylum cases to withholding of removal cases.

Petitioner had personally suffered persecution in Indonesia on account of his religion. As a Christian Indonesian, Petitioner is a member of the "disfavored minority" group in Indonesia; and therefore, Petitioner's application fro relief in the form of withholding of removal should have been granted.

CONCLUSION

Based on the foregoing reasons, Petitioner respectfully requests this Petition for a Writ of Certiorari be granted.

Dated: October 10, 2009

Respectfully Submitted,

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioner

INDEX OF APPENDICES

APPENDIX A - Order of the Ninth Circuit Court

APPENDIX B - Memorandum of the Ninth Circuit Court

APPENDIX C - Decision of the BIA

APPENDIX D - Order of the Immigration Judge

APPENDIX E - Oral Decision of the Immigration Judge

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

FILED
JUL 17 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRYAN RORING KOLOAY, No. 05-75471
Petitioner, Agency No. A078-020-381

v.

ERIC H. HOLDER, Jr., Attorney General,
Respondent.

ORDER

Before:
LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

The full court has been advised of the petition for rehearing en bane and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Koloay's petition for rehearing en bane is denied.

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
MAR 30 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRYAN RORING KOLOAY, No. 05-75472
Petitioner,

V. Agency Nos. A078-020-381

ERIC H. HOLDER, JR., Attorney General,
Respondent.

MEMORANDUM *

On Petition for Review of an Order of the Board of Immigration Appeals

Submitted March 18,2009**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

APPENDIX B

Before:

LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Bryan Roring Koloay, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence and will uphold the agency's decision unless the evidence compels a contrary conclusion. *Nagoulko* v. *INS,* 333 F.3d 1012, 1015 (9th Cir. 2003). We deny the petition for review.

Substantial evidence supports the IJ's finding that the incidents Koloay suffered did not rise to the level of persecution, *see id.* at 1016-19, and the U's finding that the Indonesian government was willing and able to control his persecutors, *see Castro-Perez* v. *Gonzales,* 409 F.3d 1069,1071-72 (9th Cir. 2005). Substantial evidence also supports the IJ's conclusion that Koloay failed to establish a clear probability of future persecution in Indonesia. *See Nagoulko, 333* F.3d at 1018; *see also Hoxha* v. *Ashcroft,* 319 F.3d 1179, 1185 (9th Cir. 2003) (applicant failed to show "it is more probable than not that he would suffer future persecution"). Accordingly, we deny Koloay's withholding of removal claim.

PETITION FOR REVIEW DENIED.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike. Suite 2000 Falls Church. Virginia 22041

Cindy S. Chang
19811 Colima Road, Suite 600
Walnut CA 91789-0000

Office of the District Counsel/LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014

Name: KOLOAY, BRYAN RORING
A78-020-381

Date of this notice: 10/31/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr
Acting Chief Clerk

Enclosure

Panel Members: GRANT, EDWARD R.

APPENDIX C

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A 78 020 381 - Los Angeles

Date: OCT 31 2006

In re: BRYAN RORING KOLOAY

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Cindy S. Chang. Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)) In the United States in violation of law

APPLICATION: Asylum; withholding of removal; relief under the Convention Against Torture

In a decision dated June 20, 2005, the Immigration Judge found the respondent subject to removal as charged, denied his applications for asylum, for withholding of removal, and for relief under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and ordered

the respondent removed.* The respondent has appealed from that decision. The appeal will be dismissed.

Based upon our review of the record, we find that the factual findings of the Immigration Judge are not clearly erroneous and we adopt and affirm the Immigration Judge's decision. *Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"); *see generally* 8 C.F.R. § 1003.1(d)(3)(i) (stating that the Board shall review factual findings of the Immigration Judge "only to determine whether the findings of the Immigration Judge are clearly erroneous").

The respondent has conceded on appeal that he is ineligible for asylum because his application was untimely (Resp. Br. at 2). Regarding the respondent's application for withholding of removal, we agree that the respondent has not met his burden of proof to show past persecution or a clear probability of persecution in Indonesia. Finally, we concur in the Immigration Judge's conclusion that the respondent has not shown that it is more likely than not that he would be tortured.

* The Immigration Judge inadvertently issued an order stating that the respondent's request for cancellation of removal is denied. The order should state the request for withholding of removal is denied.

ORDER: The appeal is dismissed.

FOR THE BOARD

IMMIGRATION COURT
606 SOUTH OLIVE ST. 15TH FL
LOS ANGELES, CA 90014

In the matter of
KOLOAY, BRYAN RORING Case No.: A78-020-381
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on Jun 20, 2005.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to
[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to
Or in the alternative to
[ ] Respondent application for voluntary departure was granted until _____
upon posting a bond in the amount of _____
with an alternate order of removal to _____

Respondent's application for:
[x] Asylum was ( ) granted (x) denied ( ) withdrawn
[x] Witholding of removal was ( ) granted (x) denied ( ) withdrawn

APPENDIX D

[ ] A waiver under section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for:

[ ] Cancellation under section 240A (b) (1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under section 240A (b) (2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[x] Respondent's application of (x) withholding of removal ( ) deferral of removal under article III of the Convention Against Torture was ( ) granted (x) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as A _____ until _____

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date: June 20, 2005

_____
CHRISTINE A. BITHER
Immigration Judge

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Los Angeles, California

File A 78 020 381 June 20, 2005

In the Matter of

BRYAN RORING KOLOAY, Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Section 237 (a) (1) (B) of the Immigration and Nationality Act

APPLICATIONS: Asylum; withholding of removal, protection under the Convention Against Torture.

ON BEHALF OF RESPONDENT:
Cindy S. Chang, Esquire

ON BEHALF OF DHS:
Jessica Owens, Esquire Assistant Chief Counsel

APPENDIX E

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent in this matter was charged with being removable from the United States by the issuance of a March 26, 2003, Notice to Appear. The charges have been sustained by clear and convincing evidence both by respondent's admissions and concessions, as well as his testimony and applications before this Court.

Respondent is a native and citizen of Indonesia who was admitted to the United States on or about December 20, 2000, with permission to remain in the United States for a temporary period 11 not to exceed June 19th, 2001.

Respondent, however, remained in the United States beyond the June 19th, 2001 period of authorization without permission from the United States Government. Accordingly, respondent is present in the United States in violation of Section 237 (a) (1) (B) of the Immigration and Nationality Act. Respondent has applied for the relief of the following: withholding of removal and for protection under the Convention Against Torture.

In support of his application, respondent testified that he left Indonesia and came to the United States in December 2000, because he feared persecution in Indonesia. He said he feared that the Muslims in Indonesia would kill the minority Christians. Respondent explained that his father is a Muslim and his mother is Christian. He testified that he was brought up as a Christian. In fact, he said that he attended Christian school in Malaysia from the ages of 5 through 12. He said that after he

finished school in Malaysia, he returned to Indonesia to study.

He explained that while he was in school he had some problems. He said that he attended a Seventh Day Adventist High School in Indonesia and it was located in an area that, as he explained it, was on the border between Christians and Muslims. He said that sometimes the Muslim students would throw rocks toward the school, as often as daily or sometimes weekly. He said that they would shout such things as the people attending that Christian school were unholy people and didn't belong in Indonesia. He said sometimes the rocks broke windows or hit school signs but he was never injured nor did he describe any injuries to anyone else.

He said the worst incident that occurred to him, happened in Mayor June of 1998. He explained he was waiting outside school when approximately 15 to 20 Muslims came toward respondent and the group of 7 or 8 students that he was with. He said these Muslims had swords and were threatening toward the group of students respondent was standing with outside the school. The police were called and police and soldiers came to protect the students of the Christian school. In fact, they were able to protect the school as well as the students. Unfortunately, however, some of respondents' friends were injured and respondent himself suffered injury to the knee. He said that after the police came, all the Muslims ran away and the police called an ambulance. They took the injured students to a hospital where respondent was treated and his wound was cleaned and bandaged. Respondent said that that church he attended in Indonesia is safe and

that there have been no problems with the church, because the church members have been able to protect it.

Respondent explained that after the riots that occurred in May and June of 1998, his parents both came to the United States, and specifically to New Jersey. He said that his father remained in the United States for approximately 5 years but after he was required to register he turned around and went home to Indonesia. Respondent decided, however, to remain in the United States, as did his mother. His mother continues to live in New Jersey. She does not, however, have any lawful immigration status here in the United States.

Respondent testified that he moved to California and married a woman of Indonesian descent or Indonesian nationality. His wife, however, does not have any lawful permanent status in the United States, in spite of the fact that she's been living here for 15 years.

Respondent testified that he wants to stay in America for freedom. He fears that if he returns to Indonesia there could be problems. He said he read on the Internet the problems between Christians and Muslims persist in Indonesia and that he heard people are continuing to throw rocks.

Respondent testified that he did not apply for asylum, after he arrived in the United States, within 1 year. He said at first he went to New Jersey to presumably be with his parents. He said there was a small church there and he did not know about asylum. He said he didn't learn about asylum until

2003 when he decided to move to California and was required to register. After he was required to register, he was placed in immigration proceedings and applied for asylum on June 16th, 2004.

Section 208(a) of the Immigration and Nationality Act gives the Attorney General the discretion to grant asylum to aliens who qualify as refugees. Fisher v. INS, 79 F.3d 955, 960 (9th Cir. en bane 1996). A refugee is defined by Section 101 (a) (42) (A) of the INA as an alien who is unable or unwilling to return to his or her home country on account of race, religion, nationality, membership in a particular social group, or political opinion. In order to establish eligibility for asylum, an applicant must present specific facts demonstrating that he is a refugee either by showing past persecution or by showing a well founded fear of persecution. As the 9th Circuit has held, persecution is an extreme concept. Fisher v. INS, 79 F.3d 961. Thus persecution's not every kind of treatment our society deems offensive or morally reprehensible. Ghaly v. INS, 58 F.3d 1425, 1431 (9th Cir. 1995).

Withholding of removal, on the other hand, prohibits the Attorney General from deporting an alien to a country where his or her life or freedom would be threatened on account of a protected ground. The alien must show a clear probability. That is, it is more likely than not, that he or she will face persecution in his or her native country. INS v. Stevie, 467 U.S. 407, 424 (1984).

In order to be granted protection under Article 3 of the United Nations Convention Against Torture, an applicant has the burden of proof of establishing

that it is more likely than not, that he or she would be tortured if removed to his or her native country. The applicant need not show that any alleged torture will be on account of a protected ground. Kamalthas v. INS, 251 F.3d 1279, 1282-83 (9th Cir. 2001).

Respondent has applied for the relief of asylum, withholding of removal, and for protection under the Convention Against Torture. In order to be eligible for asylum, however, an applicant must demonstrate by clear and convincing evidence that he or she has filed the asylum application within 1 year of the date of the applicant's arrival in the United States. If not, then the applicant must establish that he or she qualifies for an exception to the 1 year deadline. 8 C.F.R. 1208.4 (a) (2).

In this case, respondent last arrived in the United States on December 19, 2000. Respondent, however, did not apply for asylum until he appeared in this Court on June 16th, 2004. As a result, respondent must demonstrate that he qualifies for an exception before the merits of asylum application will be considered. Such exceptions consist of either changed circumstances, or extraordinary circumstances. 8 C.F.R. 1208 . 4 (a) (4) and (a) (5) .

In this matter, respondent's application for asylum will be denied for failure to establish that he timely filed the asylum application. In addition to not filing the asylum application in a timely manner, respondent has failed to establish either changed circumstances or extraordinary circumstances which would delay the filing of his application. Respondent testified that he didn't file for asylum until he moved to California and learned about asylum, sometime

after 2003. Respondent, however, lived with both of his parents, or certainly, near both of his parents in New Jersey. He's offered no credible explanation as to why he did not apply during that time. Respondent explained that neither one of this parents have status, nevertheless, respondent has failed to establish either changed circumstances or extraordinary circumstances that would cause a delay in his filing. Knowing that he was in the United States in illegal status after only 6 months here, respondent had an obligation to determine what, if anything, he could do to legalize his status or return to Indonesia. Since he chose not to return to Indonesia, he had an affirmative obligation to consult with an attorney or determine for himself what he could do to remain in the United States. Respondent, however, failed to take any action whatsoever until he was placed before this Court after he was required to register. His excuse does not amount to either changed circumstances or extraordinary circumstances excusing the late filing in this case. Accordingly, his application for asylum will be denied for failure to timely file.

Respondent, however, is eligible for withholding of removal and for protection under the Convention Against Torture. Respondent's testimony will be deemed credible.

In spite of respondent's credible testimony, however, he has failed to establish that he is a refugee. He has not suffered past persecution. Respondent described his worst experience as the experience he had while he was waiting outside his school in May of 1998. While the experience he described was certainly frightening, it was an

isolated incident where some Muslims carne toward a group of 7 or 8 Christian students. Some of the students were harmed and respondent himself was cut, however, the police carne along quickly, and protected the students and respondent himself suffered no serious harm.

In addition, respondent has had no other significant events in Indonesia that would amount to persecution. Respondent explained that he fears that the Muslims in Indonesia will harm or kill Christians, however, he has failed to establish a clear probability. That is, he has failed to establish that it's more likely than not that he will be harmed if he returns to Indonesia. Respondent explained his father is a Muslim, and surely his belief that all Muslims want to harm all Christians is somewhat exaggerated before this Court. While there's problems In Indonesia with some factions or sections of Muslims, there are many places in Indonesia that do not have sectarian fighting and are safe to live.

Respondent has reported no problems that his father may or may not be experiencing. Although his father's a Muslim, he certainly has a Christian family because his wife and son are Christian. There's simply nothing in this record that would establish that respondent would more likely than not be harmed if he returns to Indonesia. The incidences that he described are the result of an isolated period in 1998 when there was some rioting going on in Indonesia. No such rioting has been reported since that time which is now more than 6 years ago. Thus, his application for withholding will be denied.

Finally, his application for protection under

the Convention Against Torture will be denied. Respondent has made no claims or assertions that the authorities in Indonesia would torture him. In fact, his testimony is to the contrary. During the one incident where he was frightened when the Muslims carne towards the students in May of 1998, the police carne and protected the students. In fact, respondent said they protected not only the students, they protected the school and the church.

Respondent has also not set forth a claim that anyone in Indonesia wants to target him and torture him by or with the acquiescence of the authorities in Indonesia. Thus, his application for protection under the Convention Against Torture will be denied.

Respondent specifically stated that he did not wish to apply for voluntary departure, although he does appear prima facie eligible for such relief. Accordingly, the following order will enter.

ORDER

Respondent's application for asylum is denied.

Respondent's application for cancellation of removal is denied.

Respondent's application for protection under the Convention Against Torture is denied.

Respondent is hereby ordered removed from the United States to Indonesia.

CHRISTINE BITHER
Immigration Judge